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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

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9 TRIPLE B CORPORATION dba
CHARLIE'S PRODUCE,

10 Plaintiff,

11 v.

12 LUCKY PEAR, INC. dba EVERGREEN
13 MARKET and RODERICK CHIN,

14 Defendants.

No. C09-995Z

ORDER

15 THIS MATTER comes before the Court on plaintiff's motion for default judgment,
16 docket no. 11. Having reviewed plaintiff's complaint, motion, and supporting declarations,
17 the Court GRANTS plaintiff's motion IN PART and DENIES plaintiff's motion IN PART as
18 explained in the following order.

19 Plaintiff alleges that, during the period from November 2007 to February 2009, it
20 delivered perishable agricultural commodities to Evergreen Market, which was located at
21 5317 Evergreen Way in Everett, Washington, and which is no longer in operation.
22 Complaint at ¶ 9 (docket no. 1); Burbach Decl. at ¶¶ 5 & 10 (docket no. 13). The unpaid
23 balance owed for the produce in question is \$78,504.77. Burbach Decl. at ¶ 7 & Exh. B
24 (docket no. 13). Plaintiff also alleges that Evergreen Market was, at all relevant times, a
25 "dealer" as that term is defined in the Perishable Agricultural Commodities Act of 1930 (the
26 "PACA"). See Complaint at ¶ 7 (docket no. 1); see also 7 U.S.C. § 499a(b)(6) (with certain

1 exceptions, a dealer is “any person engaged in the business of buying or selling in wholesale
2 or jobbing quantities . . . any perishable agricultural commodity in interstate or foreign
3 commerce”).

4 Under the PACA, any person injured by a dealer’s failure to “make full payment
5 promptly in respect of any transaction in any such commodity” may bring an action “in any
6 court of competent jurisdiction” for the “full amount of damages . . . sustained in
7 consequence of such violation.” 7 U.S.C. §§ 499b(4), 499e(a), & 499e(b)(2). The PACA
8 does not further define the term “full amount of damages” and it contains no prejudgment
9 interest or attorney fees provisions. The PACA creates a trust, whereby perishable
10 agricultural commodities received by a dealer are held by such dealer in trust for the benefit
11 of any unpaid suppliers or sellers involved in the transaction until full payment has been
12 received by such suppliers or sellers. 7 U.S.C. § 499e(c)(2). To preserve such trust, an
13 unpaid supplier or seller must provide written notice in the manner outlined in the PACA, see
14 7 U.S.C. § 499e(c)(3), which can take the form of ordinary and usual billing or invoice
15 statements containing the following language:

16 The perishable agricultural commodities listed on this invoice are sold subject
17 to the statutory trust authorized by section 5(c) of the [PACA]. The seller of
18 these commodities retains a trust claim over these commodities, all inventories
of food or other products derived from these commodities, and any receivables
or proceeds from the sale of these commodities until full payment is received.

19 7 U.S.C. § 499e(c)(4). In connection with its deliveries of perishable agricultural
20 commodities, plaintiff issued invoices containing the above requisite wording to Evergreen
21 Market and CDDT Inc. See Burbach Decl. at ¶ 6 & Exh. A (docket no. 13).

22 In addition to the principal amount owed by Evergreen Market, plaintiff seeks
23 prejudgment interest at the rate of 18% per annum, attorney fees, and post-judgment interest
24 at a rate other than that specified by 28 U.S.C. § 1961. For these items, plaintiff relies on a
25 credit agreement with CDDT Inc., appended to which is a guaranty signed by defendant
26 Roderick Chin. See Burbach Decl. at Exh. A (docket no. 13). Plaintiff has submitted no

1 similar contract with defendant Lucky Pear, Inc., no invoices issued to Lucky Pear, Inc., and
2 no guaranty by defendant Roderick Chin of debts owed by Lucky Pear, Inc.

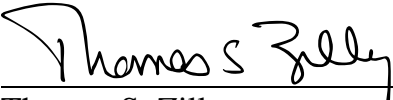
3 Plaintiff attempts to link CDDT Inc. with Lucky Pear, Inc., but plaintiff provides no
4 document evidencing either a mere name change or Lucky Pear, Inc.'s assumption of CDDT
5 Inc.'s assets and/or liabilities. Although Washington Department of Revenue records
6 indicate that both CDDT Inc. and Lucky Pear, Inc. were or are doing business as "Evergreen
7 Market," CDDT Inc. maintained a different mailing address and business location (2356 15th
8 Avenue South, Suite 101, Seattle) than both Lucky Pear, Inc. and the business entity known
9 as Evergreen Market to which plaintiff delivered the produce at issue. See Burbach Decl. at
10 Exh. C (docket no. 13). Moreover, CDDT Inc. dissolved on November 1, 2006, before the
11 debt in question was incurred. Id.

12 Based on the current record, the Court cannot conclude that the credit agreement
13 between plaintiff and CDDT Inc. is binding on Lucky Pear, Inc. or that the guaranty signed
14 by Mr. Chin was effective as to the debts of Lucky Pear, Inc. Thus, the Court finds no basis
15 for awarding attorney fees or prejudgment interest,¹ or for entering default judgment against
16 Mr. Chin. The Court further concludes that post-judgment interest at the contractual rate is
17 inappropriate, and that such interest should be computed at the rate specified by federal
18 statute. The Court will therefore enter default judgment in favor of plaintiff Triple B Corp.
19 d/b/a Charlie's Produce and solely against defendant Lucky Pear, Inc. d/b/a Evergreen
20 Market, pursuant to the Perishable Agricultural Commodities Act of 1930, specifically
21 7 U.S.C. § 499e, in the principal amount of \$76,504.77, together with costs in the amount of
22 \$570, for a total award of \$77,074.77, and interest from the date of judgment at the rate of
23 four-tenths of one percent (0.4%) per annum until paid.

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26 ¹ The Court also notes that the rate stated in the credit agreement, namely 18% per annum, appears to
violate Washington's usury statute. See RCW 19.52.020.

1 IT IS SO ORDERED.

2 DATED this 24th day of September, 2009.

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5 Thomas S. Zilly
6 United States District Judge
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